vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5452 OF 1996

Gulab Krishnarao Gunjal ... Petitioner

V/s.

1. State of Maharashtra & Ors. ... Respondents

None for Petitioner
Mr.V.S. Gokhale, AGP, for Respondents

CORAM: **J.N. PATEL &**
SMT.NISHITA MHATRE, JJ.

DATED: **NOVEMBER 19, 2007**

ORAL JUDGMENT:

. Heard. None for the petitioner. Mr.Gokhale, Assistant Government Pleader, appears for the Respondents. The petition came to be filed by the petitioner land owner challenging the order dated 11.7.1996 passed by the Chief Secretary, Government of Maharashtra u/s 34 of the Urban Land (Ceiling & Regulation) Act declaring an area of 2267 sq.mtrs. as surplus and further declaring plot No.40 as surplus land. The petitioner also challenged the consequential order which came to be passed on 7.8.1996 by the competent authority. It is the case of the petitioner that he has filed a declaration in respect of plot Nos.36 to 40 and 48 and 49. Therefore he pointed out that plot Nos.48 and 49 were leased out by registered lease deed for which he had obtained permission u/s 4(3)

of the Urban Land (Ceiling & Regulation) Act and constructed a building forming a cooperative housing society. Plot Nos.36 and 38 were leased out to one A.V. Apate whereas plot No.40 was gifted to Rohini Gunjal, who was a minor, by her uncle. Plot Nos.38 and 39 belong to minor and the said plot was sold to Vallabh co-operative housing society limited. On considering the return filed by the petitioner on 8.8.1992 the competent authority declared that the petitioner held surplus lands to the extent of 2098.67 sq.mtrs. and request of the petitioner to allow him admissible retainable land from plot No.40 and remaining land from plot No.39 was accepted. It appears that one of the members of the cooperative housing society Mr.Dabir preferred a revision application u/s 34 of the Urban Land Ceiling Act for setting aside the order dated 8.8.1994 which was allowed by the Chief Secretary by his order dated 11.6.1996 and it was declared that plot No.40 is a surplus land. It is upon this order that the competent authority passed the impugned order.

2. It is contended by the petitioner land owner that the Chief Secretary has exercised the jurisdiction not vested in him u/s 34 of the Urban Land Ceiling Act and that he had otherwise no power to review the earlier order passed on 8.8.1994. That the Chief Secretary having committed an error of law which is apparent on

the face of record by holding that plot No.40 should be treated as surplus land, it has led to an additional land being declared as surplus and, therefore, it has prejudiced the petitioner, the holder of the land, in giving his choice for selecting the land which he desires to surrender.

3. On the other hand, it is the case of the Respondent State that the petitioner was holding land bearing plot Nos.48, 49, 36, 37, 38, 39 and 40 in the final plot No.395 plus 396, Shivaji Nagar, Pune and that while examining his case, the competent authority duly took into consideration the area admeasuring 570.20 sq.mtrs. of plot No.48 on the ground that permission for constructing building was granted to the petitioner under the provisions of section 4(3) of the Urban Land Ceiling Act on 24.5.1978 and that is how the said area came to be excluded while computing the surplus land and accordingly, a declaration u/s 8(4) of the said Act was notified and the petitioner was allowed to retain one unit of 1000 sq.mtrs and 2098.57 sq.mtrs was declared as surplus. It is after the land came to be declared as surplus and the petitioner was permitted to retain the land to the extent of 1000 sq.mtrs and called upon to exercise his choice, the petitioner gave choice of land admeasuring 535.30 sq.mtrs and 464.70 sq.mtrs of plot No.40 and 39 (part) respectively and, therefore, the

competent authority was justified in declaring 2098.57 sq.mtrs as surplus land out of plot Nos.39 (part), 49, 36, 37 and 38. It is contended by the respondent that at the behest of Mr.Dabir that an application was moved in the matter to the Government on 31.10.1996 who sought reexamination of the case by calling for examining the record and order passed by the competent authority in respect of the case of the petitioner as to how the State government invoked the provisions of section 34 of the Urban Land Ceiling Act and passed the impugned order. It is contended by the respondent that the competent authority rather did not take into consideration the surplus land out of plot No.48 and, therefore, the Government was justified in declaring it to be so and as a consequence of which the competent authority modified its order which is the subject matter of the present petition. It is, therefore, submitted that the order of the competent authority in respect of the retainable land within the ceiling limit is proper.

4. During the pendency of the petition, the petitioner placed on record the fact that part of the land owned by the petitioner admeasuring 98.24 sq.mtrs pertaining to plot No.40 CTS No.968 is sought to be acquired for road widening by Pune Municipal Corporation for which no compensation was given to the petitioner and as the officers of the Pune Municipal Corporation

have illegally acquired the said land belonging to the petitioner without paying any compensation and their action having been initiated during the pendency of the petition was not justifiable. At this stage, we may observe that insofar as the action taken by the Pune Municipal Corporation relating to acquisition of land as public purpose of widening of the road is concerned, it is altogether a different issue and it had nothing to do with the subject matter of the petition and therefore in our view, the petitioner could have always pursued his remedy to claim compensation from the municipal corporation in accordance with law for the reason that in reply it had been pointed out that the Municipal Corporation has acquired the land from plot NO.40 situated at Pune pursuant to the order dated 7.8.1996 passed by the additional Collector and competent authority, Agglomeration Pune u/s 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 from the total holding of the petitioner and land admeasuring 505.30 sq.mtrs from plot No.40 was declared as surplus land. However, the possession of the said land was not taken as per order dated 5.12.1996 passed by this Court.

5. In our view, the petitioner land owner has approached this Court challenging the order passed by the State Government in the matter in respect of the land which was already disposed of by the petitioner to

the society and Mr.Dabir who claimed to be one of the members of the society moved the Government in the matter and therefore nothing prevented the State Government to reexamine the issue u/s 34 of the Urban Land Ceiling Act whereas the Government found that the Competent Authority has committed an error while declaring the surplus land as it did not consider the holding of the petitioner insofar as it related to plot No.40 for computation of retainable land. Therefore plot No.40 which was permitted to be retained was declared surplus though it was alienated by executing a deed of gift in favour of Rohini Gunjal, his niece in the year 1978 i.e., after the Urban Land Ceiling Act came into effect and, therefore, the said gift deed was rightly excluded from consideration by the State Government. It is consequent to the said order that the competent authority has modified its order.

6. In the circumstances, we do not find any merit in the matter. We therefore vacate the interim order, if any, and disallow the petition. Rule stands discharged.

(J.N. PATEL, J.)

(SMT.NISHITA MHATRE, J.)